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dba Hyatt Regency San Francisco Airport, Jimmy  
Flores, Ron Gray, Tom Phipps and Jose Reyes

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

THROY OTANES,

Plaintiff,

v.

HYATT REGENCY HOTEL  
(BURLINGAME), JIMMY FLORES,  
RON GRAY, TOM PHIPPS, JOSE  
REYES, and DOES ONE through FIFTY,

Defendants.

Case No. CV 07 5936 MHP

**ANSWER OF INDIVIDUAL DEFENDANTS  
JIMMY FLORES, RON GRAY, TOM  
PHIPPS, AND JOSE REYES TO  
PLAINTIFF'S COMPLAINT FOR  
WRONGFUL DISCHARGE ARISING  
FROM BREACH OF CONTRACT,  
BREACH OF COVENANT OF GOOD  
FAITH & FAIR DEALING,  
DISCRIMINATION BASED ON  
SEX/SEXUAL ORIENTATION, RACED-  
BASED DISCRIMINATION,  
INTENTIONAL INFLICTION OF  
EMOTIONAL DISTRESS, FAILURE TO  
PREVENT DISCRIMINATION**

Complaint Filed in State Court: May 15, 2007

Individual Defendants Jimmy Flores, Ron Gray, Tom Phipps, and Jose Reyes (hereinafter  
"Individual Defendants") hereby answer the Complaint for Wrongful Discharge Arising from  
Breach of Contract, Breach of Covenant of Good Faith & Fair Dealing, Discrimination Based on  
Sex/Sexual Orientation, Raced-Based Discrimination, Intentional Infliction of Emotional

1 Distress, and Failure to Prevent Discrimination (“Complaint”) filed by plaintiff Throy Otones  
2 (“Plaintiff”) in the above-captioned matter as follows:<sup>1</sup>

3 **ANSWER TO PARAGRAPHS ENTITLED “JURISDICTIONAL ALLEGATIONS”**

4 1. Individual Defendants have no information or belief on the subject sufficient to  
5 enable them to answer the allegations contained in Paragraph 1 of the Complaint, and basing their  
6 denial on that ground, deny generally and specifically each and every allegation contained in said  
7 paragraph, except that Individual Defendants admit that the Hyatt Regency San Francisco Airport  
8 hotel does business in the County of San Mateo, State of California.

9 2. Answering Paragraph 2 of the Complaint, Individual Defendants admit that Jimmy  
10 Flores, Ron Gray, Tom Phipps, and Jose Reyes are individuals and employees of Hyatt  
11 Corporation dba Hyatt Regency San Francisco Airport.

12 3. Individual Defendants have no information or belief on the subject sufficient to  
13 enable them to answer the allegations contained in Paragraph 3 of the Complaint, and basing their  
14 denial on that ground, deny generally and specifically each and every allegation contained in said  
15 paragraph.

16 4. Individual Defendants have no information or belief on the subject sufficient to  
17 enable them to answer the allegations contained in Paragraph 4 of the Complaint, and basing their  
18 denial on that ground, deny generally and specifically each and every allegation contained in said  
19 paragraph, except that Individual Defendants allege that Plaintiff was a union employee covered  
20 by a written collective bargaining agreement between International Union of Operating  
21 Engineers, AFL-CIO, Stationary Engineers, Local 39 and the Hyatt Regency San Francisco  
22 Airport (“the hotel”), which written agreement covered the terms and conditions of Plaintiff’s  
23 employment in San Mateo County, California.

24 5. Individual Defendants deny generally and specifically each and every allegation  
25 contained in Paragraph 5 of the Complaint.

26 \_\_\_\_\_  
27 <sup>1</sup> Defendant Hyatt Corporation dba Hyatt Regency San Francisco Airport (“Hyatt”)  
28 (erroneously named herein as “Hyatt Regency Hotel (Burlingame)”) has not yet been served with the Summons and Complaint.

1           6.       Individual Defendants have no information or belief on the subject sufficient to  
2 enable them to answer the allegations contained in Paragraph 6 of the Complaint, and basing their  
3 denial on that ground, deny generally and specifically each and every allegation contained in said  
4 paragraph.

5           7.       Individual Defendants have no information or belief on the subject sufficient to  
6 enable them to answer the allegations contained in Paragraph 7 of the Complaint, and basing their  
7 denial on that ground, deny generally and specifically each and every allegation contained in said  
8 paragraph.

9                   **ANSWER TO PARAGRAPHS ENTITLED "GENERAL ALLEGATIONS"**

10          8.       Answering Paragraph 8 of the Complaint wherein Plaintiff incorporates  
11 Paragraphs 1 through 7 of the Complaint, Individual Defendants reallege and hereby incorporate  
12 by this reference their responses to said paragraphs as though fully set forth herein.

13          9.       Individual Defendants have no information or belief on the subject sufficient to  
14 enable them to answer the allegations contained in Paragraph 9 of the Complaint, and basing their  
15 denial on that ground, deny generally and specifically each and every allegation contained in said  
16 paragraph.

17          10.      Individual Defendants have no information or belief on the subject sufficient to  
18 enable them to answer the allegations contained in Paragraph 10 of the Complaint, and basing  
19 their denial on that ground, deny generally and specifically each and every allegation contained in  
20 said paragraph, except that Individual Defendants admit that Plaintiff is female and that she was  
21 openly gay and her sexual orientation was known to many co-workers.

22          11.      Individual Defendants have no information or belief on the subject sufficient to  
23 enable them to answer the allegations contained in Paragraph 11 of the Complaint, and basing  
24 their denial on that ground, deny generally and specifically each and every allegation contained in  
25 said paragraph, except that Individual Defendants admit that Plaintiff worked as a utility engineer  
26 at the hotel.

27          12.      Individual Defendants admit that as a utility engineer, Plaintiff was tasked to do  
28 various minor repair work and minor electrical repair work, but Individual Defendants deny that

1 minor electrical work does not include lockout/tagout electrical work, and specifically allege that  
2 Plaintiff was trained many times in lockout/tagout procedures at the hotel, as were other utility  
3 engineers.

4 13. Individual Defendants have no information or belief on the subject sufficient to  
5 enable them to answer the allegations contained in Paragraph 13 of the Complaint, and basing  
6 their denial on that ground, deny generally and specifically each and every allegation contained in  
7 said paragraph, except that Individual Defendants admit that when Plaintiff worked as a utility  
8 engineer at the hotel, she initially was assigned Unit 7 work (rooms preventative maintenance),  
9 but performed both Unit 7 and Unit 8 work, which are both utility engineer assignments.

10 14. Individual Defendants have no information or belief on the subject sufficient to  
11 enable them to answer the allegations contained in Paragraph 13 of the Complaint, and basing  
12 their denial on that ground, deny generally and specifically each and every allegation contained in  
13 said paragraph, except that Individual Defendants allege that Plaintiff frequently requested help  
14 from them when she was performing her work as a utility engineer.

15 15. Individual Defendants deny generally and specifically each and every allegation  
16 contained in Paragraph 15 on page 4 of the Complaint, except that Individual Defendants admit  
17 that Individual Defendant Jose Reyes is a utility engineer. Individual Defendants Tom Phipps,  
18 and Ron Gray are maintenance engineers, and Individual Defendant Jimmy Flores is a painter.  
19 Defendants also admit that in 2005, Mark Hergert was promoted to Assistant Director of  
20 Engineering and assumed supervisory responsibilities in the hotel's engineering department.

21 16. Individual Defendants deny generally and specifically each and every allegation  
22 contained in Paragraph 16 on page 4 of the Complaint.

23 17. Individual Defendants deny generally and specifically each and every allegation  
24 contained in Paragraph 17 on page 4 of the Complaint, except that Individual Defendants admit  
25 that at some point, Plaintiff complained to the hotel's human resources department alleging that  
26 two other engineering employees, "Al" and "Arnel", were coming in to rooms in which she was  
27 working, borrowing tools, gossiping, annoying her, telling her that Unit 7 work was very hard,  
28 and asking her if Individual Defendant Jimmy Flores (a painter), was doing his job on Sundays (a

1 day that she worked with Mr. Flores), and that she also alleged that Mr. Flores sometimes talked  
2 to her as well, telling her that Unit 7 work was harder than Unit 8 work.

3 18. Individual Defendants deny generally and specifically each and every allegation  
4 contained in Paragraph 18 on page 5 of the Complaint.

5 19. Individual Defendants have no information or belief on the subject sufficient to  
6 enable them to answer the allegations contained in Paragraph 19 on page 5 of the Complaint, and  
7 basing their denial on that ground, deny generally and specifically each and every allegation  
8 contained in said paragraph.

9 15<sub>2</sub>. Individual Defendants have no information or belief on the subject sufficient to  
10 enable them to answer the allegations contained in Paragraph 15<sub>2</sub> (the second paragraph 15  
11 contained in the Complaint) on page 5 of the Complaint, and basing their denial on that ground,  
12 deny generally and specifically each and every allegation contained in said paragraph, except that  
13 Individual Defendants admit that at some point, at her specific request, Plaintiff was assigned  
14 Unit 7 work because she stated that she should be assigned Unit 7 work due to her seniority.

15 16<sub>2</sub>. Individual Defendants have no information or belief on the subject sufficient to  
16 enable them to answer the allegations contained in Paragraph 16<sub>2</sub> (the second paragraph 16  
17 contained in the Complaint) on page 5 of the Complaint, and basing their denial on that ground,  
18 deny generally and specifically each and every allegation contained in said paragraph, except that  
19 Individual Defendants admit that at some point, Plaintiff may have been the only female utility  
20 engineer at the hotel; however, Individual Defendants also allege that there previously had been  
21 another female utility engineer at the hotel named Jennifer Schaff, who subsequently became an  
22 apprentice engineer, and who then subsequently was promoted to maintenance engineer, then was  
23 promoted to Assistant Director of Engineering (supervising both Individual Defendants and  
24 Plaintiff), and then was promoted to Director of Engineering at a different Hyatt hotel.

25 17<sub>2</sub>. Individual Defendants have no information or belief on the subject sufficient to  
26 enable them to answer the allegations contained in Paragraph 17<sub>2</sub> (the second paragraph 17  
27 contained in the Complaint) on page 5 of the Complaint, and basing their denial on that ground,  
28 deny generally and specifically each and every allegation contained in said paragraph, except that

1 Individual Defendants allege that Plaintiff would have known prior to her assignment to Unit 7  
2 work whether the utility engineers performing Unit 7 work were all males, since Plaintiff knew  
3 all of the engineers in the Engineering Department. Defendants further specifically deny that  
4 Tom Phipps, Ron Gray and Jimmy Flores performed Unit 7 work.

5 18<sub>2</sub>. Individual Defendants have no information or belief on the subject sufficient to  
6 enable them to answer the allegations contained in Paragraph 18<sub>2</sub> (the second paragraph 18  
7 contained in the Complaint) on pages 5-6 of the Complaint, and basing their denial on that  
8 ground, deny generally and specifically each and every allegation contained in said paragraph,  
9 except that Individual Defendants deny that Plaintiff was not given any training for Unit 7 work,  
10 inasmuch as all engineers in the hotel received extensive training, including Plaintiff.

11 19<sub>2</sub>. Individual Defendants have no information or belief on the subject sufficient to  
12 enable them to answer the allegations contained in Paragraph 19<sub>2</sub> (the second paragraph 19  
13 contained in the Complaint) on page 6 of the Complaint, and basing their denial on that ground,  
14 deny generally and specifically each and every allegation contained in said paragraph, except that  
15 Individual Defendants also specifically deny that Plaintiff was “learning on the job” in 2002, as  
16 she should already have had the ability to perform Unit 7 work, having worked as a utility  
17 engineer for three years. Individual Defendants also specifically deny that Jimmy Flores or  
18 anyone else was “out to give her a hard time, pouncing on her every mistake and harassing her  
19 every chance they get.”

20 20. Individual Defendants have no information or belief on the subject sufficient to  
21 enable them to answer the allegations contained in Paragraph 20 of the Complaint, and basing  
22 their denial on that ground, deny generally and specifically each and every allegation contained in  
23 said paragraph.

24 21. Individual Defendants have no information or belief on the subject sufficient to  
25 enable them to answer the allegations contained in Paragraph 21 of the Complaint, and basing  
26 their denial on that ground, deny generally and specifically each and every allegation contained in  
27 said paragraph, and also specifically deny that anyone was giving Plaintiff a “hard time”.

28 22. Individual Defendants have no information or belief on the subject sufficient to

1 enable them to answer the allegations contained in Paragraph 22 of the Complaint, and basing  
2 their denial on that ground, deny generally and specifically each and every allegation contained in  
3 said paragraph.

4 23. Individual Defendants deny generally and specifically each and every allegation  
5 contained in Paragraph 23 of the Complaint, and further respond as follows.

6 23(a). Individual Defendants deny generally and specifically each and every allegation  
7 contained in Paragraph 23(a) of the Complaint.

8 23(b). Individual Defendants deny generally and specifically each and every allegation  
9 contained in Paragraph 23(b) of the Complaint.

10 23(c). Individual Defendants deny generally and specifically each and every allegation  
11 contained in Paragraph 23(c) of the Complaint.

12 23(d). Individual Defendants deny generally and specifically each and every allegation  
13 contained in Paragraph 23(d) of the Complaint.

14 24. Individual Defendants have no information or belief on the subject sufficient to  
15 enable them to answer the allegations contained in Paragraph 25 of the Complaint, and basing  
16 their denial on that ground, deny generally and specifically each and every allegation contained in  
17 said paragraph, except that Individual Defendants admit that Individual Defendant Tom Phipps  
18 completed a plumbing repair job that had been assigned to Plaintiff after Plaintiff called on her  
19 radio for assistance.

20 25. Individual Defendants have no information or belief on the subject sufficient to  
21 enable them to answer the allegations contained in Paragraph 25 of the Complaint, and basing  
22 their denial on that ground, deny generally and specifically each and every allegation contained in  
23 said paragraph, except that Individual Defendants admit that Plaintiff was suspended by the hotel  
24 in April 2005.

25 26. Individual Defendants have no information or belief on the subject sufficient to  
26 enable them to answer the allegations contained in Paragraph 25 of the Complaint, and basing  
27 their denial on that ground, deny generally and specifically each and every allegation contained in  
28 said paragraph, and Individual Defendants further allege that Individual Defendant Ron Gray



1 assisted Plaintiff in connection with a minor electrical assignment checking on a receptacle,  
2 showed Plaintiff how to use her voltmeter, showed Plaintiff the simple steps to replace the  
3 receptacle, and reminded her to do the necessary lockout/tagout procedure, and that Plaintiff then  
4 confirmed that she was able to complete the job; however, Plaintiff was not able to complete the  
5 job, and subsequently another utility engineer had to complete the job for her after her shift  
6 ended.

7 27. Individual Defendants have no information or belief on the subject sufficient to  
8 enable them to answer the allegations contained in Paragraph 27 of the Complaint, and basing  
9 their denial on that ground, deny generally and specifically each and every allegation contained in  
10 said paragraph, except that Individual Defendants admit Plaintiff may have been called to Human  
11 Resources on May 23, 2005.

12 28. Answering Paragraph 28 of the Complaint, Individual Defendants admit that  
13 Plaintiff was discharged from her employment on May 24, 2005.

14 29. Individual Defendants deny generally and specifically each and every allegation  
15 contained in Paragraph 29 of the Complaint.

16 30. Individual Defendants deny generally and specifically each and every allegation  
17 contained in Paragraph 30 of the Complaint.

18 **ANSWER TO FIRST CAUSE OF ACTION**

19 (Breach of Contract) (Against Defendant Hyatt only)

20 31. Answering Paragraph 31 of the Complaint wherein Plaintiff incorporates  
21 Paragraphs 1 through 30 (including the duplicative-numbered paragraphs) of the Complaint,  
22 Individual Defendants reallege and hereby incorporate by this reference their responses to said  
23 paragraphs as though fully set forth herein.

24 32. Individual Defendants assert that no response is required to Paragraph 32 of the  
25 Complaint because this cause of action is alleged against Defendant Hyatt alone.

26 33. Individual Defendants assert that no response is required to Paragraph 33 of the  
27 Complaint because this cause of action is alleged against Defendant Hyatt alone.

28 34. Individual Defendants assert that no response is required to Paragraph 34 of the



1 Complaint because this cause of action is alleged against Defendant Hyatt alone.

2 35. Individual Defendants assert that no response is required to Paragraph 35 of the  
3 Complaint because this cause of action is alleged against Defendant Hyatt alone.

4 36. Individual Defendants assert that no response is required to Paragraph 36 of the  
5 Complaint because this cause of action is alleged against Defendant Hyatt alone.

6 37. Individual Defendants assert that no response is required to Paragraph 37 of the  
7 Complaint because this cause of action is alleged against Defendant Hyatt alone.

8 38. Individual Defendants assert that no response is required to Paragraph 38 of the  
9 Complaint because this cause of action is alleged against Defendant Hyatt alone.

10 **ANSWER TO SECOND CAUSE OF ACTION**

11 (Breach of Covenant of Good Faith and Fair Dealing) (Against Defendant Hyatt only)

12 39. Answering Paragraph 39 of the Complaint wherein Plaintiff incorporates  
13 Paragraphs 1 through 38 of the Complaint, Individual Defendants reallege and hereby incorporate  
14 by this reference their responses to said paragraphs as though fully set forth herein.

15 40. Individual Defendants assert that no response is required to Paragraph 40 of the  
16 Complaint because this cause of action is alleged against Defendant Hyatt alone.

17 41. Individual Defendants assert that no response is required to Paragraph 41 of the  
18 Complaint because this cause of action is alleged against Defendant Hyatt alone.

19 42. Individual Defendants assert that no response is required to Paragraph 42 of the  
20 Complaint because this cause of action is alleged against Defendant Hyatt alone.

21 43. Individual Defendants assert that no response is required to Paragraph 43 of the  
22 Complaint because this cause of action is alleged against Defendant Hyatt alone.

23 44. Individual Defendants assert that no response is required to Paragraph 44 of the  
24 Complaint because this cause of action is alleged against Defendant Hyatt alone.

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**ANSWER TO THIRD CAUSE OF ACTION**

(Discrimination)

**ANSWER TO COUNT 1**

(Race-Based Discrimination)

45. Answering Paragraph 45 of the Complaint wherein Plaintiff incorporates Paragraphs 1 through 44 of the Complaint, Individual Defendants reallege and hereby incorporate by this reference their responses to said paragraphs as though fully set forth herein.

46. Individual Defendants have no information or belief on the subject sufficient to enable them to answer the allegations contained in Paragraph 46 of the Complaint, and basing their denial on that ground, deny generally and specifically each and every allegation contained in said paragraph, except that Individual Defendants assert that no response is required to the first sentence of Paragraph 46 of the Complaint.

47. Individual Defendants deny generally and specifically each and every allegation contained in Paragraph 47 of the Complaint.

48. Individual Defendants deny generally and specifically each and every allegation contained in Paragraph 48 of the Complaint.

49. Individual Defendants deny generally and specifically each and every allegation contained in Paragraph 49 of the Complaint.

50. Individual Defendants deny generally and specifically each and every allegation contained in Paragraph 50 of the Complaint.

51. Individual Defendants deny generally and specifically each and every allegation contained in Paragraph 51 of the Complaint.

52. Individual Defendants have no information or belief on the subject sufficient to enable them to answer the allegations contained in Paragraph 52 of the Complaint, and basing their denial on that ground, deny generally and specifically each and every allegation contained in said paragraph.

53. Individual Defendants deny generally and specifically each and every allegation contained in Paragraph 53 of the Complaint.

1           54.     Individual Defendants deny generally and specifically each and every allegation  
2 contained in Paragraph 54 of the Complaint.

3           55.     Individual Defendants deny generally and specifically each and every allegation  
4 contained in Paragraph 55 of the Complaint.

5                                   **ANSWER TO COUNT 2**

6                                   (Age-Based Discrimination)

7           56.     Answering Paragraph 56 of the Complaint wherein Plaintiff incorporates  
8 Paragraphs 1 through 55 of the Complaint, Individual Defendants reallege and hereby incorporate  
9 by this reference their responses to said paragraphs as though fully set forth herein.

10          57.     Individual Defendants have no information or belief on the subject sufficient to  
11 enable them to answer the allegations contained in Paragraph 57 of the Complaint, and basing  
12 their denial on that ground, deny generally and specifically each and every allegation contained in  
13 said paragraph, except that Individual Defendants assert that no response is required to the first  
14 sentence of Paragraph 57 of the Complaint.

15          58.     Individual Defendants deny generally and specifically each and every allegation  
16 contained in Paragraph 58 of the Complaint.

17          59.     Individual Defendants deny generally and specifically each and every allegation  
18 contained in Paragraph 59 of the Complaint.

19          60.     Individual Defendants deny generally and specifically each and every allegation  
20 contained in Paragraph 60 of the Complaint.

21          61.     Individual Defendants deny generally and specifically each and every allegation  
22 contained in Paragraph 61 of the Complaint.

23          62.     Individual Defendants deny generally and specifically each and every allegation  
24 contained in Paragraph 62 of the Complaint.

25          63.     Individual Defendants have no information or belief on the subject sufficient to  
26 enable them to answer the allegations contained in Paragraph 63 of the Complaint, and basing  
27 their denial on that ground, deny generally and specifically each and every allegation contained in  
28 said paragraph.

64. Individual Defendants deny generally and specifically each and every allegation contained in Paragraph 64 of the Complaint.

65. Individual Defendants deny generally and specifically each and every allegation contained in Paragraph 65 of the Complaint.

66. Individual Defendants deny generally and specifically each and every allegation contained in Paragraph 66 of the Complaint.

**ANSWER TO COUNT 3**

(Discrimination Based on Sex)

67. Answering Paragraph 67 of the Complaint wherein Plaintiff incorporates Paragraphs 1 through 66 of the Complaint, Individual Defendants reallege and hereby incorporate by this reference their responses to said paragraphs as though fully set forth herein.

68. Individual Defendants have no information or belief on the subject sufficient to enable them to answer the allegations contained in Paragraph 68 of the Complaint, and basing their denial on that ground, deny generally and specifically each and every allegation contained in said paragraph, except that Individual Defendants assert that no response is required to the first sentence of Paragraph 68 of the Complaint. Individual Defendants also admit that Plaintiff is a female.

69. Individual Defendants deny generally and specifically each and every allegation contained in Paragraph 69 of the Complaint.

70. Individual Defendants deny generally and specifically each and every allegation contained in Paragraph 70 of the Complaint.

71. Individual Defendants deny generally and specifically each and every allegation contained in Paragraph 71 of the Complaint.

72. Individual Defendants deny generally and specifically each and every allegation contained in Paragraph 72 of the Complaint.

73. Individual Defendants deny generally and specifically each and every allegation contained in Paragraph 73 of the Complaint.

74. Individual Defendants deny generally and specifically each and every allegation

1 contained in Paragraph 74 of the Complaint.

2 75. Individual Defendants have no information or belief on the subject sufficient to  
3 enable them to answer the allegations contained in Paragraph 75 of the Complaint, and basing  
4 their denial on that ground, deny generally and specifically each and every allegation contained in  
5 said paragraph.

6 76. Individual Defendants deny generally and specifically each and every allegation  
7 contained in Paragraph 76 of the Complaint.

8 77. Individual Defendants deny generally and specifically each and every allegation  
9 contained in Paragraph 77 of the Complaint.

10 78. Individual Defendants deny generally and specifically each and every allegation  
11 contained in Paragraph 78 of the Complaint.

12 **ANSWER TO COUNT 4**

13 (Discrimination Based on Sexual Orientation)

14 79. Answering Paragraph 79 of the Complaint wherein Plaintiff incorporates  
15 Paragraphs 1 through 78 of the Complaint, Individual Defendants reallege and hereby incorporate  
16 by this reference their responses to said paragraphs as though fully set forth herein.

17 80. Individual Defendants have no information or belief on the subject sufficient to  
18 enable them to answer the allegations contained in Paragraph 80 of the Complaint, and basing  
19 their denial on that ground, deny generally and specifically each and every allegation contained in  
20 said paragraph, except that Individual Defendants assert that no response is required to the first  
21 sentence of Paragraph 80 of the Complaint. Individual Defendants also admit that Plaintiff is  
22 female, and that she stated to co-workers that she was a lesbian.

23 81. Individual Defendants deny generally and specifically each and every allegation  
24 contained in Paragraph 81 of the Complaint.

25 82. Individual Defendants deny generally and specifically each and every allegation  
26 contained in Paragraph 82 of the Complaint.

27 83. Individual Defendants deny generally and specifically each and every allegation  
28 contained in Paragraph 83 of the Complaint.

1           84.     Individual Defendants deny generally and specifically each and every allegation  
2 contained in Paragraph 84 of the Complaint.

3           85.     Individual Defendants deny generally and specifically each and every allegation  
4 contained in Paragraph 85 of the Complaint.

5           86.     Individual Defendants deny generally and specifically each and every allegation  
6 contained in Paragraph 86 of the Complaint.

7           87.     Individual Defendants have no information or belief on the subject sufficient to  
8 enable them to answer the allegations contained in Paragraph 87 of the Complaint, and basing  
9 their denial on that ground, deny generally and specifically each and every allegation contained in  
10 said paragraph.

11          88.     Individual Defendants deny generally and specifically each and every allegation  
12 contained in Paragraph 88 of the Complaint.

13          89.     Individual Defendants deny generally and specifically each and every allegation  
14 contained in Paragraph 89 of the Complaint.

15          90.     Individual Defendants deny generally and specifically each and every allegation  
16 contained in Paragraph 90 of the Complaint.

17                   **ANSWER TO FOURTH CAUSE OF ACTION**

18                   (In infliction of Emotional Distress)

19                   **ANSWER TO COUNT 1**

20          91.     Answering Paragraph 91 of the Complaint wherein Plaintiff incorporates  
21 Paragraphs 1 through 90 of the Complaint, Individual Defendants reallege and hereby incorporate  
22 by this reference their responses to said paragraphs as though fully set forth herein.

23          92.     Individual Defendants deny generally and specifically each and every allegation  
24 contained in Paragraph 92 of the Complaint.

25          93.     Individual Defendants deny generally and specifically each and every allegation  
26 contained in Paragraph 93 of the Complaint, except that Individual Defendants admit that  
27 Plaintiff was terminated from her employment.

28          94.     Individual Defendants deny generally and specifically each and every allegation

1 contained in Paragraph 94 of the Complaint.

2 95. Individual Defendants deny generally and specifically each and every allegation  
3 contained in Paragraph 95 of the Complaint.

4 **ANSWER TO COUNT 2 (Against Defendant Hyatt Only)**

5 96. Individual Defendants assert that no response is required to Paragraph 96 of the  
6 Complaint because this count is alleged against Defendant Hyatt alone.

7 96(a). Individual Defendants assert that no response is required to Paragraph 96(a) of the  
8 Complaint because this count is alleged against Defendant Hyatt alone.

9 96(b). Individual Defendants assert that no response is required to Paragraph 96(b) of the  
10 Complaint because this count is alleged against Defendant Hyatt alone.

11 97. Individual Defendants assert that no response is required to Paragraph 97 of the  
12 Complaint because this count is alleged against Defendant Hyatt alone.

13 98. Individual Defendants assert that no response is required to Paragraph 98 of the  
14 Complaint because this count is alleged against Defendant Hyatt alone.

15 99. Individual Defendants assert that no response is required to Paragraph 99 of the  
16 Complaint because this count is alleged against Defendant Hyatt alone.

17 100. Individual Defendants assert that no response is required to Paragraph 100 of the  
18 Complaint because this count is alleged against Defendant Hyatt alone.

19 **ANSWER TO FIFTH CAUSE OF ACTION**

20 (Failure to Take Steps to Prevent Discrimination) (Against Defendant Hyatt only)

21 101. Individual Defendants assert that no response is required to Paragraph 101 of the  
22 Complaint because this cause of action is alleged against Defendant Hyatt alone.

23 102. Individual Defendants assert that no response is required to Paragraph 102 of the  
24 Complaint because this cause of action is alleged against Defendant Hyatt alone.

25 103. Individual Defendants assert that no response is required to Paragraph 103 of the  
26 Complaint because this cause of action is alleged against Defendant Hyatt alone.

27 104. Individual Defendants assert that no response is required to Paragraph 104 of the  
28 Complaint because this cause of action is alleged against Defendant Hyatt alone.



105. Individual Defendants assert that no response is required to Paragraph 105 of the Complaint because this cause of action is alleged against Defendant Hyatt alone.

106. Individual Defendants assert that no response is required to Paragraph 106 of the Complaint because this cause of action is alleged against Defendant Hyatt alone.

107. Individual Defendants assert that no response is required to Paragraph 107 of the Complaint because this cause of action is alleged against Defendant Hyatt alone.

108. Individual Defendants assert that no response is required to Paragraph 108 of the Complaint because this cause of action is alleged against Defendant Hyatt alone.

109. Individual Defendants assert that no response is required to Paragraph 109 of the Complaint because this cause of action is alleged against Defendant Hyatt alone.

## RECOVERY

Individual Defendants further specifically deny that Plaintiff has suffered any injury or damages of any kind attributable in any way to any act or omission on the part of Individual Defendants or any other person or entity.

## AFFIRMATIVE DEFENSES

## FIRST AFFIRMATIVE DEFENSE

(Failure to State Facts Sufficient to Constitute a Cause of Action)

As a first and separate defense, and solely by way of an alternative defense, not to be construed as an admission, Individual Defendants allege that the Complaint and each cause of action (and count) therein fails to state facts sufficient to constitute a cause of action against Individual Defendants.

## **SECOND AFFIRMATIVE DEFENSE**

(Preemption by Federal Labor Law)

As a second and separate defense, and solely by way of an alternative defense, not to be construed as an admission, Individual Defendants allege that to the extent that Plaintiff seeks recovery for alleged injury caused by alleged actions that were governed by the terms of the collective bargaining agreement between the Hyatt Regency San Francisco Airport and Stationary Engineers Union, Local 39 (of which Plaintiff was a member), the exclusive remedy for such an

1 injury, if any, is governed by the mandatory arbitration clause of the collective bargaining  
2 agreement pursuant to 29 U.S.C. § 185.

3 **THIRD AFFIRMATIVE DEFENSE**

4 (No Basis for Compensatory and/or Emotional Distress Damages)

5 As a third and separate defense, and solely by way of an alternative defense, not to be  
6 construed as an admission, Individual Defendants allege that Plaintiff has failed to state facts  
7 sufficient to provide a legal or factual basis to award compensatory damages or damages for  
8 emotional distress to Plaintiff under any of the causes of action alleged in the Complaint.

9 **FOURTH AFFIRMATIVE DEFENSE**

10 (No Basis for Punitive Damages)

11 As a fourth and separate defense, and solely by way of an alternative defense, not to be  
12 construed as an admission, Individual Defendants allege that Plaintiff has failed to state facts  
13 sufficient to provide a legal or factual basis to award punitive damages under any causes of action  
14 alleged in the Complaint, and further allege that excessive punitive damage awards violate the  
15 due process clause of the United State Constitution and California Constitution.

16 **FIFTH AFFIRMATIVE DEFENSE**

17 (Punitive Damages Bar)

18 As a fifth and separate defense, and solely by way of an alternative defense, not to be  
19 construed as an admission, Individual Defendants allege that any claim for punitive damages is  
20 barred by California Civil Code Section 3294(b).

21 **SIXTH AFFIRMATIVE DEFENSE**

22 (No Basis for Attorneys' Fees)

23 As a sixth and separate defense, and solely by way of an alternative defense, not to be  
24 construed as an admission, Individual Defendants allege that Plaintiff has failed to state facts  
25 sufficient to provide legal or factual basis to award attorneys' fees or costs to Plaintiff.

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**SEVENTH AFFIRMATIVE DEFENSE**

(Failure to Exhaust Administrative Remedies)

As a seventh and separate defense, and solely by way of an alternative defense, not to be construed as an admission, Individual Defendants allege that Plaintiff's causes of action, or parts therein, are barred to the extent that Plaintiff failed to exhaust her administrative remedies.

**EIGHTH AFFIRMATIVE DEFENSE**

(Privilege/Justification)

As an eighth and separate defense, and solely by way of an alternative defense, not to be construed as an admission, Individual Defendants allege that their conduct toward Plaintiff, if any, was privileged and/or justified.

**NINTH AFFIRMATIVE DEFENSE**

(No Malice/Good Faith Belief)

As a ninth and separate defense, and solely by way of an alternative defense, not to be construed as an admission, Individual Defendants allege that at all time and places mentioned in the Complaint, Individual Defendants acted reasonably, with due care, without malice, and with good faith belief in the propriety of their conduct at all times material to the allegation in the Complaint.

**TENTH AFFIRMATIVE DEFENSE**

(Barred by Workers' Compensation)

As a tenth and separate defense, and solely by way of an alternative defense, not to be construed as an admission, Individual Defendants allege that to the extent that Plaintiff seeks recovery for alleged pain, suffering, mental anguish and/or emotional distress, then, pursuant to California Labor Code Section 3601, the exclusive remedy for such injury, if any, is governed by the California Workers' Compensation Act, California Labor Code Sections 3200 *et seq.*

**ELEVENTH AFFIRMATIVE DEFENSE**

(Plaintiff Unreasonably Failed to Utilize Procedures to Prevent Harassment/Discrimination)

As an eleventh and separate defense, and solely by way of an alternative defense, not to be construed as an admission, Individual Defendants allege that Defendant Hyatt exercised

1 reasonable care to prevent and correct promptly any harassing and/or discriminatory behavior in  
2 the workplace, including the implementation of a policy prohibiting harassment, which was in  
3 place at all relevant times and known by the Plaintiff, and that if any harassment and/or  
4 discrimination occurred, which Individual Defendants deny, Plaintiff unreasonably failed to use  
5 any of the preventative and corrective measures provided by Defendant Hyatt.

6 **TWELFTH AFFIRMATIVE DEFENSE**

7 (Avoidable Consequences)

8 As a twelfth and separate defense, and solely by way of an alternative defense, not to be  
9 construed as an admission, Individual Defendants allege that Defendant Hyatt exercised  
10 reasonable care to prevent and promptly correct any purported harassing or discriminatory  
11 behavior, and that if any harassment or discrimination of Plaintiff occurred (which Individual  
12 Defendants deny), Plaintiff unreasonably failed to take advantage of any preventive or corrective  
13 opportunities provided by Individual Defendants or to avoid harm otherwise, which would have  
14 prevented at least some of the alleged injury suffered by Plaintiff.

15 **THIRTEENTH AFFIRMATIVE DEFENSE**

16 (Failure to Mitigate)

17 As a thirteenth and separate defense, and solely by way of an alternative defense, not to be  
18 construed as an admission, Individual Defendants allege that Plaintiff's damages, if any, are  
19 barred because she failed to mitigate damages, and any recovery of damages, if there be any,  
20 should be reduced in the amount by which she should have mitigated those alleged damages.

21 **FOURTEENTH AFFIRMATIVE DEFENSE**

22 (Failure to Complain)

23 As a fourteenth and separate defense, and solely by way of an alternative defense, not to  
24 be construed as an admission, Individual Defendants allege that to the extent that Plaintiff failed  
25 to complain about certain acts or omissions alleged in the Complaint, such failure to complain  
26 constitutes a bar to Plaintiff's recovery of any damages.

**FIFTEENTH AFFIRMATIVE DEFENSE**

(Statute of Limitations)

As a fifteenth and separate defense, and solely by way of an alternative defense, not to be construed as an admission, Individual Defendants allege that the causes of action alleged against them, or parts therein, are barred by the applicable statute of limitations, including but not limited to those set forth in California Gov't Code Section 12960 and California Code of Civil Procedure Section 340.

**SIXTEENTH AFFIRMATIVE DEFENSE**

(Laches)

As a sixteenth and separate defense, and solely by way of an alternative defense, not to be construed as an admission, Individual Defendants allege that Plaintiff's delay in asserting her alleged claims bars her claims set forth in the Complaint by the doctrine of laches.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

(Waiver/Estoppel/Unclean Hands)

As a seventeenth and separate defense, and solely by way of an alternative defense, not to be construed as an admission, Individual Defendants allege that Plaintiff's recovery in this action is barred by the doctrines of waiver, estoppel, and unclean hands in connection with her job performance and conduct.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

(No Injury to Plaintiff)

As an eighteenth and separate defense, and solely by way of an alternative defense, not to be construed as an admission, Individual Defendants allege that Plaintiff has not suffered any injury, damage, loss or harm due to any actions by the Individual Defendants.

**RESERVATION OF DEFENSES**

Individual Defendants reserve the right to raise additional affirmative defenses as they become known during the course of litigation.

WHEREFORE, Individual Defendants pray for judgment as follows:

1           1.       That judgment be entered in favor of Individual Defendants and that Plaintiff take  
2 nothing by her Complaint;

3           2.       That the Complaint herein be dismissed;

4           3.       That Individual Defendants be awarded their costs of suit incurred in the defense  
5 of this action, including attorneys' fees; and

6           4.       That Individual Defendants be awarded such other and further relief as the Court  
7 deems proper.

8  
9 Dated: December 3, 2007

FOLGER LEVIN & KAHN LLP

10                               /s/ *Lisa M. van Krieken*

11                               Lisa M. van Krieken

12                               Attorneys for Defendants

13                               Hyatt Corporation dba Hyatt Regency San Francisco  
14                               Airport, Jimmy Flores, Ron Gray, Tom Phipps  
15                               and Jose Reyes

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